

**BEFORE THE TENNESSEE ETHICS COMMISSION**

In re:	)	No. 2008-27
	)	
TENNESSEE COUNSELING ASSN.,	)	
	)	
Respondent.	)	

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**ORDER ASSESSING CIVIL PENALTIES**

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This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on June 24, 2008, at its regularly scheduled meeting upon Commission staff's presentation of documentation substantiating that Respondent failed timely to file a Semi-Annual Lobbying Expenditure Report ("Report") which each employer of a lobbyist is required to file pursuant to Tenn. Code Ann. § 3-6-303(a).

**FINDINGS OF FACT**

Based on the entire record in this matter, the Commission finds as follows:

1.     Registration. Tennessee Counseling Association was registered as an employer of a lobbyist for 2007.
2.     Semi-Annual Lobbying Expenditure Report.
  - A.     On October 2007, Commission staff notified Tennessee Counseling Association by electronic mail that it was required to file a Report for the period ending September 30, 2007, and that such Report was due to be filed by November 15, 2007.
  - B.     As of November 15, 2007, Tennessee Counseling Association had not filed its Report for the period ending September 30, 2007.
  - C.     On December 5, 2007, Commission staff mailed Tennessee Counseling Association a Notice of Failure to File Semi-Annual Lobbying Expenditure Report ("Notice") by first class mail.
  - D.     Tennessee Counseling Association did not respond to said Notice and did not file its Report.
  - E.     Tennessee Counseling Association timely filed its Report for the period ending March 31, 2007.

F. Tennessee Counseling Association is in possession of the Commission's manual for lobbyists and employers of lobbyists as required by Tenn. Code Ann. § 3-6-114(c), which contains the requirement of filing Reports.

G. Tennessee Counseling Association had sufficient notice of the requirement of filing the Report for the period ending September 30, 2007, in advance of its due date of November 15, 2007.

3. Notice of violation.

A. On March 12, 2008, Commission staff sent Tennessee Counseling Association, by certified mail, return receipt requested, a Notice that the Commission intended to consider assessment of civil penalties against Tennessee Counseling Association at its April 22, 2008 meeting, because of its failure to file its Report by November 15, 2007 ("Show Cause Notice.")

B. The Show Cause Notice set forth the allegations, the maximum amount of civil penalties that could be assessed, the date, place, and time of the meeting, and Tennessee Counseling Association's opportunity to participate in an informal proceeding at the meeting either by appearing personally or by submitting a sworn statement and documents.

C. The Show Cause Notice was returned on April 1, 2008, because of an incorrect mailing address. Tennessee Counseling Association failed to notify the Commission of an address change.

D. The Commission sent a second Show Cause Notice on April 8, 2008 which was received April 10, 2008.

4. Filing of Report. The Commission received Tennessee Counseling Association's Semi-Annual Lobbying Expenditure Report on April 11, 2008.

5. Showing of Cause. Tennessee Counseling Association did submit an explanation for its failure to file its Report by November 15, 2007 in response to the Show Cause Notice. The Commission received the explanation on April 28, 2008. It stated that it believed payment of its 2008 registration fee satisfied the December warning notice. This matter was on the agenda at the Commission's regularly scheduled meetings on April 22, 2008, May 27, 2008 and June 24, 2008. Tennessee Counseling Association did not appear at any of the Commission meetings to explain its conduct.

### **CONCLUSIONS OF LAW**

1. Tennessee Counseling Association had a duty under Tenn. Code Ann. § 3-6-303(a) to file a Report for the six (6) month period ending September 30, 2007. This Report was due to be filed no later than November 15, 2007.

2. Under Tenn. Code Ann. § 3-6-306(a)(iii), the Commission may administratively assess a civil penalty of not more than twenty-five dollars (\$25.00) per day up to a maximum of seven hundred fifty dollars (\$750.00) if an employer of a lobbyist fails, without good cause, to timely file its Report.

3. Tennessee Counseling Association did not show good cause why it failed to file its Report by November 15, 2007.

4. Therefore, it is appropriate for the Commission to assess a civil penalty pursuant to Tenn. Code Ann. § 3-6-303(a). The Commission would be within its authority to assess the maximum penalty of seven hundred fifty (\$750.00) dollars.

5. Because Tennessee Counseling Association filed its Report reasonably promptly after receiving the Show Cause Notice, and provided an explanation, which are mitigating factors, the Commission finds it appropriate to assess a civil penalty of three hundred and fifty dollars (\$350.00).

6. This assessment cannot become final until after respondent has been afforded notice and an opportunity for a hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to its right to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325.

### **ORDER**

It is therefore ORDERED as follows:

1. A civil penalty in the amount of three hundred and fifty dollars (\$350.00) is assessed against Tennessee Counseling Association for failure to timely file a Semi-Annual Lobbying Expenditure Report.

2. The Executive Director shall enter this Order.

3. The Executive Director shall cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery.

4. Respondent shall have the right to seek reconsideration of this Order by filing with the Commission, within fourteen (14) days after the date of entry of this Order, a written Request for Reconsideration in the form set forth in the Commission's draft Rules on Administrative Sanctions.

5. Alternatively, Respondent shall have the right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days after the date of entry of this Order, a Petition for a contested case hearing in the form set forth in the Commission's draft Rules on Administrative Sanctions.

6. Along with this Order, the Executive Director shall provide Respondent a copy of the Commission's draft Rules on Administrative Sanctions.

7. If Respondent does not timely file a Request for Reconsideration or a Petition for a contested case hearing, this Order shall become final and shall form the basis for legal action to collect the civil penalty.

SO ORDERED, this 30<sup>th</sup> day of June, 2008

TENNESSEE ETHICS COMMISSION

By: \_\_\_\_\_  
Bruce A. Androphy, Executive Director